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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

STERLING PACIFIC LENDING, INC.,

Plaintiff and Appellant,

v.

WAYNE HOLMAN,

Defendant and Respondent.

H044662

(Monterey County

Super. Ct. No. M128502)

Appellant Sterling Pacific Lending, Inc. (Sterling), lent \$1.3 million for a project to develop 80 acres in Monterey County. The central issue in this appeal is whether the borrower of the loan from Sterling was an entity called Aromas Heritage Oaks, LLC (the LLC), the four individual members of the LLC, or both the LLC and its individual members. Respondent Wayne Holman, the manager of the LLC, and its three other members also each signed separate guaranties in which they personally guaranteed repayment of the loan. When Monterey County did not approve the proposed subdivision project, the borrower defaulted. Sterling foreclosed on the land through a nonjudicial foreclosure sale but received from the sale less than the amount owed on the loan. Sterling then brought suit against Holman and the other LLC members seeking payment of the deficiency pursuant to their promises to pay in their respective guaranties.

Holman and Sterling proceeded to a bench trial. Holman's primary defense to the suit was that he was one of the borrowers of the loan, and therefore Sterling's decision to sell the land through a nonjudicial foreclosure sale extinguished Sterling's right to recover the deficiency against him under the guaranty pursuant to California's antideficiency statutes. The trial court conducted a bench trial and ruled in favor of Holman. The trial court issued a statement of decision finding that the LLC and the LLC members were all coborrowers under the promissory note secured by the deed of trust. Because Holman was one of the borrowers, the trial court concluded that the antideficiency principle codified at Code of Civil Procedure section 580d foreclosed Sterling from seeking a deficiency judgment against him.

Sterling appeals the judgment, arguing primarily that the trial court erred in its interpretation of the loan. Sterling contends the loan transaction documents are unambiguous in stating that only the LLC is the borrower, and the trial court erred as a matter of law in finding ambiguity on this point. Sterling also argues that the trial court misinterpreted the loan documents as a matter of law. Finally, Sterling states that the trial court erred when it found that Sterling also acted as a broker, rather than merely as a lender. For the reasons explained below, we agree with Sterling that the trial court erred in its finding that Holman was a coborrower. Based on our independent review of the loan documents and the guaranty Holman signed, we conclude Holman was a guarantor of the loan but not a coborrower. We therefore reverse the judgment.

I. FACTS AND PROCEDURAL BACKGROUND

A. The Parties

In approximately 1998, Holman,¹ Philip Zobel, Marcella Zobel, and Star Mallory (Marcella's sister) purchased approximately 80 acres of undeveloped land in Aromas, California, that they hoped to develop into a residential subdivision. Several years later, Holman, the Zobels, and Mallory formed a limited liability company called Aromas Heritage Oaks, LLC (the LLC) and transferred the property to it. The four members of the LLC were Holman (holding a 50 percent interest), Philip and Marcella Zobel (holding together a 25 percent interest), and Mallory (holding a 25 percent interest) (collectively, the LLC members). Holman was the manager of the LLC, and he possessed the sole authority under the LLC's operating agreement to bind the LLC by signing on its behalf the loan at issue here.

Prior to early 2008, the LLC members sought additional funds to refinance the existing debt on the property and to prepare an environmental impact report to submit to Monterey County as part of their application for permitting approval. Marcella Zobel worked with a loan broker named Michael Hughett of Santa Cruz Financial to secure loan proposals, and they eventually received a proposal from Sterling.

Sterling is a private real estate lender that also holds a broker's license. Related to this loan transaction, Sterling and Santa Cruz Financial executed a "Broker to Broker Agreement" to govern the mortgage applications submitted by Santa Cruz Financial on behalf of the LLC to Sterling for its consideration.

In order to secure the loan, in November 2007, Holman submitted a standard form "Uniform Residential Loan Application" to Sterling in which, under "[b]orrower's

¹ Holman's then-wife was one of the original purchasers, but she appears to have later relinquished her rights to the property and was not a member of the LLC that was later formed for the property.

[n]ame” he wrote “Wayne R. Holman.” At the bottom of each page of the form, Holman wrote his initials after “[b]orrower.” Holman provided in the application his personal information including his date of birth, social security number, home phone number, and employment information, as well as information about his personal assets and liabilities. Sterling ran a credit report on Holman. The other LLC members completed similar loan applications.

The record contains an unsigned “commercial loan application,” (capitalization omitted) which was prepared from a “Sterling in-house form.” The loan application lists Holman as a guarantor. In a section explaining Holman’s relationship to the borrower, the box marked “[g]uarantor” is checked, and the box marked “[c]omaker/[c]oborrower” is not checked. Sterling could not recall whether it had received a signed copy of the commercial loan application, and there was no evidence presented at trial that Holman had ever seen the document. The form does not contain any information about the LLC’s debts or any bank account information showing any LLC assets other than the property. Sterling’s representative testified that he largely relied on the preliminary title report for the land in his due diligence of the LLC, as he was told the LLC “was a special purpose entity that only owned this asset.”

None of the individual members of the LLC had any contact with Sterling prior to signing the loan documents. Instead, certain individual members of the LLC—and particularly Marcella Zobel—communicated directly with the loan broker, Santa Cruz Financial, through Michael Hughett, who worked for Santa Cruz Financial.

B. The Loan Documents and Guaranties

The LLC members executed a number of documents in connection with the loan. The trial court found, and the parties do not dispute on appeal, that the “core loan documents” included the note itself, the deed of trust, the “Interest-Only Addendum to [the] Fixed Rate Note,” and the “1-4 Family Rider (Assignment of Rents).” (Some capitalization omitted.) Sterling created all of these documents. Because certain features

of these four documents form the basis of the trial court's findings against Sterling and underlie Sterling's claims on appeal, we detail them here.

The three-page Note (the Note) sets out the terms of the \$1.3 million loan, secured by a deed of trust on the property, for a term of 18 months bearing an annual interest rate of 13 percent. Although Sterling is defined as the "[l]ender" under the Note, the term "borrower" is not defined. A section in the Note titled "OBLIGATIONS OF PERSONS UNDER THIS NOTE" states that "[i]f more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, [i]ncluding the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things." The Note does not further define who, if anyone, is a "guarantor, surety or endorser" of the Note. All four individuals (that is Holman, the Zobels, and Mallory) signed the last page of the Note. In the signature caption and under the signature line immediately following their individual names, the pre-printed label "[b]orrower" appears. The parties' briefing places great emphasis on this caption, and we discuss it in further detail below.

The LLC members also signed a deed of trust securing repayment of the loan with the property held by the LLC. The deed of trust contains the same signature captions as does the Note. The first page of the deed of trust defines the borrower as "Aromas Heritage Oaks, LLC." (Some capitalization omitted.)

In the document titled "Interest-Only Addendum to Fixed Rate Note," (some capitalization omitted) Sterling is defined as the lender, and "[b]orrower" is not defined. The agreement states the obligations using the pronoun "I"—for instance, "I will make a payment every month. This payment will be for interest only for the first 17 months (the 'Interest Only Period'), and then will consist of principal and interest." As with the Note and deed of trust, the four individual members of the LLC signed this document using the same signature caption as they did in the Note.

In the document titled “1-4 Family Rider (Assignment of Rents),” (some capitalization omitted) the term borrower is defined as “the undersigned,” and the four LLC members signed using the same signature blocks described above. At trial, Sterling also argued that a fifth document—the “Balloon Payment Disclosure”—was a core loan document. (Some capitalization omitted.) That document also did not define the term “[b]orrower(s),” and all four individuals signed under a caption with both their printed names and the descriptor “member of [the LLC].” (Capitalization omitted.) The caption under Holman’s signature lists the LLC, with the following two lines consisting of his full name and then “member of Aromas Heritage Oaks, LLC.” (Some capitalization omitted.)

In addition to these documents, Holman and the other individuals signed an assortment of disclosures, notices, and other miscellaneous documents. For example, Holman signed a document titled “Signature Affidavit and AKA Statement,” which lists only the LLC as the borrower. (Some capitalization omitted.) The escrow-related documents signed on that date also state that the LLC is the borrower.

Holman signed a document titled “Payment Guaranty” at the same time he signed the other documents because it was also in the “loan packet.” Taking together the preprinted text, reproduced in regular text, with the additional inserted text in underline, the first page of the guaranty states that Sterling is the lender and “proposes to lend to: [¶] Aromas Heritage Oaks, LLC [¶] (hereinafter ‘Borrower’), the principal sum of \$1,300,000.00 (the ‘Loan’).” In its factual recitals, the guaranty states, “Lender is unwilling to make the Loan based solely on the security offered by Borrower and Borrower’s own creditworthiness, unless individuals with a credit worthiness comparable to that of Guarantor guaranty the Loan in accordance with the terms and conditions set forth below.” The guaranty provides that the “Guarantor unconditionally guarantees and promises to pay to Lender or order . . . all amounts due under the Note (together with interest thereon and any and all other amounts which may become due pursuant to all

terms and conditions of the Note), and any amount advanced, disbursed, or which may become due pursuant to the Deed of Trust.”

Under the signature line where Holman signed the guaranty, the caption states: “By: Wayne Holman, Member of Aromas Heritage Oaks, LLC.” The other LLC members signed similar guaranties. Although the guaranties are purportedly dated February 14, 2008, there is no evidence they were signed on that date. According to Holman, he signed the guaranty with the other loan documents on February 22. Although Holman testified he was not specifically told about the guaranty, he signed the guaranty along with the Note in the stack of documents he signed related to the loan.²

B. Subsequent Events and Default

In approximately June 2010, Monterey County’s planning commission denied the LLC’s project application, the subdivision project collapsed, and the loan went into default. Sterling elected to have the land sold at a nonjudicial foreclosure sale. Sterling successfully bid on the land and took ownership of it. Despite this acquisition, Sterling was unable to recoup all of its losses under the loan, claiming a deficiency of nearly \$1 million at the time of the foreclosure sale. Ultimately, Sterling brought suit against Holman, the Zobels, and Mallory for this deficiency, alleging that each had personally guaranteed the loan and breached their respective guaranties by failing to make payments after the LLC defaulted on the loan.³ The Zobels and Mallory settled with Sterling, and they were dismissed from the action.

² It is not clear from the record when the other individual members of the LLC signed their respective guaranties. E-mails from Zobel to Sterling (on which Holman was not copied) suggest that Marcella Zobel signed the guaranty some time after she had signed the other loan documents.

³ Sterling also alleged the torts of intentional and negligent misrepresentation against all LLC members but later apparently dropped those claims. They are not at issue on appeal.

C. Trial

The trial court conducted a five-day bench trial on Sterling's remaining claims against Holman, which were for breach of contract (first cause of action) and common counts (fourth cause of action). In addition to admitting the loan transaction documents into evidence, Holman and Marcella Zobel testified.⁴ The trial court also heard testimony from Joshua Fischer, the vice president of Sterling, who testified it was Sterling's "general business practice" to have the members of an entity sign the loan documents. Fischer understood when approving the loan that the LLC did not have any present streams of income or assets other than the development project.

Fischer also explained that Sterling had done due diligence on the individual LLC members' financial history, and that "[o]ne of the main factors" in evaluating the viability of the loan transaction was Marcella Zobel's and Mallory's personal income from a trust. Sterling also reviewed the LLC's operating agreement and understood that Holman was its manager.

Michael Hughett, a third-party witness who had worked for Santa Cruz Financial during the relevant transaction, testified that he had brokered the loan and was the primary point of contact between the LLC members and Sterling. Hughett testified that he did not discuss the guaranty with Holman.

Sterling contended that it intended for the LLC to be the borrower of the loan, with the individual LLC members serving as guarantors. Holman thought that the individual LLC members, and not the LLC itself, were the borrowers.

On February 6, 2017, the trial court issued an oral ruling. It stated, "at the time this transaction was entered, it is clear to the Court that this loan was being made on the strength of not only the land but the financial resources of the individual borrowers" and

⁴ Sterling also presented at trial the testimony of its comptroller as a damages expert, but we need not address this testimony for purposes of this appeal.

in particular the trust income streams of sisters Star Mallory and Marcella Zobel. The trial court further noted that Holman had signed the core loan documents in “two capacities” under his name in the “core loan documents,” that the documents are “very, very strong evidence of objectively what was the intention of the parties,” and that it would “render the language of the documents meaningless to conclude that [Holman] signed in only one capacity.” The trial court then stated that “those [signature] captions were directly placed by [Sterling’s] organization at Mr. Fischer’s direction and they have to be construed accordingly.” The trial court further found that the signature affidavit “simply authenticates . . . Mr. Holman’s signature on behalf of the LLC.” It therefore concluded that “both the LLC and its four members were borrowers and personally obligated on the note contrary to either side’s theory.” In its oral ruling on construing the identity of the borrowers of the loan, the trial court did not mention the guaranties.

Based on its conclusion that Holman and the individual LLC members were coborrowers of the loan, the trial court found that Sterling could not obtain a deficiency judgment against Holman because Code of Civil Procedure section 580d precluded recovery from a borrower following nonjudicial foreclosure of the security. As part of its oral ruling, the trial court stated that there was “no question in the Court’s mind that Santa Cruz Financial and Sterling Pacific co-brokered the loan,” and they failed to make disclosures required of a loan broker, including that Sterling did not discuss the terms of the guaranties with the individual borrowers.

D. Statement of Decision

The trial court later issued a written statement of decision that stated both its factual and legal findings. On the “principal controverted” issue of the identity of the borrowers, the trial court ruled that all of the individuals “were co-borrowers and personally liable with Aromas Heritage Oaks, LLC (hereafter sometimes ‘the LLC’) on the Note.” The trial court further stated it “finds that Wayne Holman signed the Note in two capacities, as a representative of the LLC and as an individual. The other members

signed only in their individual capacities. The individuals and the LLC were all borrowers.”

As to the “secondary” issue of “whether plaintiff . . . was a broker of this loan and owed the borrowers a fiduciary duty to disclose all of the material facts of the loan,” the court found that “[Sterling] and its co-broker owed a fiduciary duty of disclosure and they breached that duty by failing to disclose all of the material terms of the loan.”

Regarding the “final” issue of whether Sterling had a right to seek a deficiency judgment from Holman, the trial court ruled that, under California’s antideficiency statutes, and in particular Code of Civil Procedure section 580d, Sterling “was barred from seeking a deficiency judgment from [Holman] on the Payment Guaranty after the non-judicial foreclosure of the security for the Note.” That conclusion hinged on the trial court’s prior finding that Holman was a borrower and personally obligated on the note.

The trial court entered judgment in favor of Holman, and Sterling timely appealed.

II. DISCUSSION

Sterling urges us to reverse the trial court’s judgment in favor of Holman, arguing primarily that the trial court misinterpreted the agreements surrounding the loan transaction. Sterling maintains that the agreements unambiguously show that the LLC was the sole borrower, and that Holman was not a borrower but a guarantor. To the extent there is an ambiguity in the identity of the borrower, Sterling contends the trial court erred in concluding that the four individuals (including Holman) and the LLC were coborrowers of the loan under the Note. According to Sterling, because Holman was only a guarantor of the loan and not one of its borrowers, the antideficiency protection that Code of Civil Procedure section 580d provides to borrowers does not apply to Holman. Finally, Sterling argues that the trial court erred in finding that it acted as a loan broker rather than as a lender.

As discussed further below, although we agree with Holman that certain of the loan agreements are ambiguous, we agree with Sterling that the trial court erred in its

interpretation of the loan documents. In particular, the trial court erred by ignoring the clear language of the guaranty, which described the LLC as the borrower and Holman only as a guarantor. We therefore reverse the judgment.

A. General Principles

We begin with the basic principles of contractual interpretation under the California Civil Code. The fundamental goal of contractual interpretation is “to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.” (Civ. Code, § 1636.)⁵ “For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this Chapter are to be applied.” (§ 1637.) “The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.” (§ 1638.) “When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this Title.” (§ 1639.) “Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.” (§ 1642.) “A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.” (§ 1647.)

“If the language in the contract is ambiguous, ‘it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.’ (Civ. Code, § 1649.) This inquiry does not consider the subjective belief of the promisor but, rather, the ‘objectively reasonable’ expectation of the promisee.” (*Linton v. County of Contra Costa* (2019) 31 Cal.App.5th 628, 636, citations omitted (*Linton*).) “If, after this second inquiry, the ambiguity remains, ‘the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.’ (§ 1654.)” (*Ibid.*)

⁵ Unspecified statutory references are to the Civil Code.

“[R]ational interpretation requires at least a preliminary consideration of all credible evidence offered to prove the intention of the parties. Such evidence includes testimony as to the ‘circumstances surrounding the making of the agreement . . . including the object, nature and subject matter of the writing . . .’ so that the court can ‘place itself in the same situation in which the parties found themselves at the time of contracting.’ ” (*Pacific Gas & E. Co. v. G.W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 39–40, internal citations omitted (*Pacific Gas & Electric*).) “The decision whether to admit parol evidence involves a two-step process. First, the court provisionally receives (without actually admitting) all credible evidence concerning the parties’ intentions to determine ‘ambiguity,’ i.e., whether the language is ‘reasonably susceptible’ to the interpretation urged by a party. If in light of the extrinsic evidence the court decides the language is ‘reasonably susceptible’ to the interpretation urged, the extrinsic evidence is then admitted to aid in the second step—interpreting the contract.” (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165, quoting *Blumenfeld v. R.H. Macy & Co.* (1979) 92 Cal.App.3d 38, 45.)

B. *Existence of Ambiguity*

Sterling contends that the loan documents unambiguously reflect that the parties’ mutual intention at the time of contracting was that the LLC was the borrower and Holman (as well as the other individual LLC members) were guarantors of the loan. We therefore must first determine whether the language of the contract at issue is ambiguous in that it is “reasonably susceptible to two different meanings.” (*ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1270.) This “threshold” determination of ambiguity is subject to de novo review. (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club* (2003) 109 Cal.App.4th 944, 955 (*Newport Beach*).)

We have reviewed the loan agreements in the record and conclude that they are reasonably susceptible to different meanings as to the identity of the borrower. Even on

its face, the Note is ambiguous. The Note does not define the term “borrower,” although it does state that “the Lender is Sterling Pacific Lending, Inc.” (Some capitalization omitted.) A section in the Note titled “OBLIGATIONS OF PERSONS UNDER THIS NOTE” states that “[i]f more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, [i]ncluding the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things.” On the signature page of the Note, each of the four individual members of the LLC signed the document. Immediately following their individual names the pre-printed term “[b]orrower” appears. As to Holman, under his signature and next to the pre-printed term “[b]orrower” it says *both* “Aromas Heritage Oaks, LLC” and “Wayne Holman [¶] Member of Aromas Heritage Oaks, LLC.” The signature caption in the Note (with the actual signatures redacted) appears as follows:

AROMAS HERITAGE OAKS, LLC, (Seal)
WAYNE HOLMAN -Borrower
MEMBER OF AROMAS HERITAGE OAKS, LLC

STAR MALLORY, (Seal)
MEMBER OF AROMAS HERITAGE OAKS, LLC

PHILIP ZOBEL, (Seal)
MEMBER OF AROMAS HERITAGE OAKS, LLC

MARCELLA ZOBEL, (Seal)
MEMBER OF AROMAS HERITAGE OAKS, LLC

Thus, although Sterling asserts it is clear that Holman signed “only” for the LLC, that is not how the caption appears, which has both the LLC’s name as well as his individual name printed below the signature line. Similarly, the caption for Holman in the balloon payment disclosure—another document that Sterling argued was a core loan document—includes both the LLC’s name as well as his name.

Moreover, although the deed of trust and guaranty describe the “[b]orrower” as “Aromas Heritage Oaks, LLC,” (some capitalization omitted) this statement does not defeat a finding of ambiguity here in light of the other conflicting language in the agreements related to the loan transaction noted above, particularly the lack of definition of the term “[b]orrower” in the Note itself and the signature captions that list each of the LLC individual members as a “[b]orrower.”

Furthermore, “the test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible.” (*Pacific Gas & Electric, supra*, 69 Cal.2d at p. 37.) Relevant extrinsic evidence admitted by the trial court showed that it was at least a reasonable interpretation of the loan documents that the individual LLC members were borrowers of the loan. For example, each individual member filled out separate loan applications that included his or her personal financial information. Such information supports a reasonable inference that the individual members of the LLC were coborrowers with the LLC itself. Of course, this information could also have been relevant if the individual members of the LLC were going to act as guarantors for the loan to the LLC. That there are two reasonable inferences to draw from this evidence highlights the ambiguity in the loan documents. For these reasons, we conclude that the writings, including the Note, are reasonably susceptible to different interpretations as to the identity of the borrower of the loan.

C. Interpretation of the Note

Having determined that the loan documents are ambiguous as to the identity of the borrower, we turn now to the trial court’s conclusion that both the individual LLC members (including Holman) and the LLC itself were coborrowers of the loan. Under California law, “if the language in the contract is ambiguous, ‘it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee

understood it.’ (Civ. Code, § 1649.)” (*Linton, supra*, 31 Cal.App.5th at p. 636.) Sterling contends that it intended the loan for the LLC with the individual LLC members serving as guarantors. Holman argued before the trial court that the individual LLC members were the borrowers. On appeal, Holman maintains that the loan documents support the trial court’s interpretation that the contracting parties intended that both the LLC and its individual members were borrowers.

1. Applicable Legal Principles

We first address the threshold matter of the appropriate standard of review. Sterling contends our review must be de novo because there was no “substantive extrinsic evidence regarding the interpretation of the loan documents.” Holman urges us to apply the substantial evidence rule to the trial court’s determination that the individuals as well as the LLC were borrowers. “When a trial court’s construction of a written agreement is challenged on appeal, the scope and standard of review depend on whether the trial judge admitted *conflicting* extrinsic evidence to resolve any ambiguity or uncertainty in the contract. If extrinsic evidence was admitted, and *if* that evidence was in conflict, then we apply the substantial evidence rule to the factual findings made by the trial court. But if no extrinsic evidence was admitted, or if . . . the evidence was not in conflict, we independently construe the writing.” (*De Anza Enterprises v. Johnson* (2002) 104 Cal.App.4th 1307, 1315.) “When there is no material conflict in the extrinsic evidence, the trial court interprets the contract as a matter of law.” (*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1126.) This is true even when “extrinsic evidence renders the contract terms susceptible to more than one reasonable interpretation.” (*Id.* at p. 1127.)

Here, the material evidence was not in conflict and consisted mainly of the agreements themselves, and certain undisputed evidence of the circumstances and due diligence involving the loan, including that Sterling relied on the strength of the individuals’ personal finances as well as the title report on the property to approve the

loan. Holman points to a conflict at trial over the “intent of the parties.” Holman cites the testimony of Sterling’s executive that its intent was that the individual members of the LLC were solely to be guarantors of the loan, whereas Holman testified to a contrary subjective intent. In its written decision the trial court based its interpretation of the Note in part on Holman and Marcella Zobel’s belief that they “intended to sign the Note and the Payment Guarantys in their individual capacities.” However, none of this testimony was legally relevant.

A “part[y’s] undisclosed intent or understanding is irrelevant to contract interpretation.” (*Newport Beach, supra*, 109 Cal.App.4th at p. 956.) There is no evidence that either Holman or Sterling expressed their subjective beliefs to the other prior to entering into the transaction at issue here. Sterling and Holman had no contact with one another, and Holman had not spoken with nor met the loan broker who served as the intermediary between the individual LLC members and Sterling. Thus, this testimony over conflicting subjective views of the loan is made “inadmissible by the objective theory of contracts.” (*Id.* at p. 960.)

Our review of the trial record shows no material conflict in admissible evidence relevant to interpreting the identity of the borrower of the loan. We therefore independently review the agreements to resolve this question.

2. Analysis

We agree that, looking solely at the Note itself, one can reasonably interpret that document to mean that Holman was a coborrower with the LLC of the loan. However, the guaranty makes clear that the LLC was the borrower of the loan, and Holman was only a guarantor. Under longstanding precedent, a contract of guaranty and a note “should be read together in the light of surrounding circumstances so that the true intention of the parties may be ascertained.” (*First Nat. Bank v. Spalding* (1918) 177 Cal. 217, 221.) Moreover, the “language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.” (§ 1638.)

There is no dispute that Holman voluntarily executed the guaranty along with the other loan documents. The Note itself does not define the identity of the borrower. By contrast, the guaranty clearly states that Holman is the guarantor and defines the borrower of the loan as “Aromas Heritage Oaks, LLC.” Holman has cited no authority for ignoring the explicit language of the contemporaneous guaranty when interpreting the intent of the parties in the loan transaction as to the identity of the borrower.

By contrast to Holman’s lack of supporting authority, sections 1641 and 1642 require that we use the guaranty to interpret the ambiguity in the Note over the identity of the borrower. Section 1642 states that several contracts “relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.” In addition, we must consider the entire contract and try “to give effect to every part.” (§ 1641.) A conclusion that Holman was a coborrower of the loan, renders the guaranty meaningless. Under the terms of the Note, if Holman were a borrower, Holman would already have promised to pay back the loan. Under those circumstances, a guaranty would be redundant to Holman’s preexisting obligation to pay. By contrast, interpreting the LLC as the borrower and Holman as a guarantor gives a reasonable effect to both agreements and accords with the guaranty’s express language.

In addition, the deed of trust securing the Note unambiguously on the first page defines the borrower as the LLC. Similarly, other loan documents such as the signature affidavit clearly indicate the borrower is the LLC. While Holman points out that the other “core loan documents” do not separately identify the LLC as the borrower, none identifies Holman as a borrower. While the somewhat confusing format of the signature captions may be read to suggest that Holman is a coborrower, Holman points us to no authority that holds that an ambiguous signature caption trumps explicit language in related documents. Here, those documents clearly define the borrower as the LLC and describe Holman solely as a guarantor.

Holman's briefing on appeal does not meaningfully challenge the unambiguous language in the deed of trust or guaranty, which was part of the loan packet he signed. Holman emphasizes the forms were prepared by Sterling and, citing generally to section 1654, argues that any ambiguity should be construed against Sterling. However, section 1654 states: "In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." This interpretive rule applies only if ambiguity remains after recourse to other rules of construction. Section 1654 "does not stand for the proposition that, in every case where one of the parties to a contract points out a possible ambiguity, the interpretation favored by the nondrafting party will prevail." (*Rainier Credit Co. v. Western Alliance Corp.* (1985) 171 Cal.App.3d 255, 263.)

Although our review is de novo, we note that the trial court appears to have erred principally by failing to consider the relevance of the guaranty in interpreting the identity of the borrower under the loan. We recognize that the trial court did discuss the guaranty in terms of its "secondary" finding that Sterling was a fiduciary to Holman acting as his loan broker and therefore owed him a duty to explain the terms of the loan to him, including the guaranty. However, we fail to see the relevance of this issue in interpreting the loan documents.

Although Sterling appealed the trial court's conclusion on this issue, at oral argument Sterling stated that it is irrelevant to interpreting the agreements at issue here. At oral argument Holman pointed us to *Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773, relied on by the trial court in its conclusions about fiduciary duty. However, *Wyatt* did not involve a matter of contract interpretation but rather addressed an affirmative claim by the borrower that a mortgage broker had breached its duty in the context of a mortgage loan and affirmed a jury verdict awarding the borrower damages. (*Id.* at pp. 779, 791.) In that case, the borrowers had personally retained the mortgage loan broker and the court held in the circumstances of that case, the broker's failure to disclose

orally the true rate of interest and penalties breached the broker's fiduciary obligations. (*Id.* at p. 784.) The court in *Wyatt* highlighted that "the record discloses that respondents were persons of modest means and limited experience in financial affairs, whose equity in their home was their principal asset. They retained a mortgage loan broker to negotiate for them highly complex loan terms and they may be assumed to have justifiably relied on the latter's expertise. Against such a backdrop, the broker's failure to disclose orally the true rate of interest, the penalty for late payments or the swollen size of the balloon payment clearly constituted breach of the broker's fiduciary obligations." (*Id.* at pp. 783-784.)

Here, the record does not reflect that Holman retained Sterling to represent him and seek loans for him. Holman has never alleged he was affirmatively misled by Sterling, he did not ask Sterling about the loan documents or guaranty, and he acknowledges that the guaranty was part of the loan packet he signed. Thus, *Wyatt* is factually distinct, and neither the parties nor the trial court's statement of decision explain its relevance to contract interpretation.

For these reasons, we conclude that, applying ordinary rules of contract interpretation, the loan documents demonstrate that at the time Sterling, the LLC, and Holman entered into the loan transaction, they intended with respect to the loan that the LLC was the borrower and Holman a guarantor.⁶

Having determined that Holman was a guarantor, we find nothing in the record which impels us to order a new trial. The case was fully tried. Therefore, we will remand the matter to the trial court to determine any remaining issues, including Holman's defenses and whether Sterling incurred damages and, if so, the amount.

⁶ Because we reach this conclusion as a matter of contract interpretation, we need not reach Sterling's argument based on Evidence Code section 622 that the recitals in the various documents stating that the LLC is the borrower are to be "conclusively presumed to be true."

III. DISPOSITION

The judgment is reversed and the matter is remanded to the trial court to determine, in conformity with the views expressed herein on the issue of Holman being a guarantor but not a borrower, any remaining issues, including Holman's defenses and whether Sterling incurred damages and, if so, the amount.

DANNER, J.

WE CONCUR:

GREENWOOD, P.J.

BAMATTRE-MANOUKIAN, J.

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